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VIA ELECTRONIC MAIL ONLY

Edythe Nash Gaiser, Clerk of the Court
Supreme Court of Appeals of West Virginia
Capitol Complex
1900 Kanawha Boulevard East
Building 1, Room E-317
Charleston, West Virginia 25305

Re: Proposed Amendments to West Virginia Rules of Civil Procedure

Dear Eydie:

I am writing to comment on the proposed Amendments to the Rules of Civil Procedure. I have passed along a number of specific comments to the Defense Trial Counsel of West Virginia, but I want to make some general comments personally.

I tried my first case in May, 1970 and have had the great good fortune of having been in complex litigations since then in our State Courts and Federal Courts. I can testify from experience how critical procedural rules are in the litigation process. I can also relate the substantial evolution which has occurred in litigation over the last 50 years in West Virginia.

Over these years, the Federal Rules of Civil Procedure have been amended with some frequency to keep pace with these dramatic changes in litigation, but unfortunately our Rules have not. I have taught several seminars on the Federal and West Virginia Rules of Civil Procedure, and it is awkward to explain why the West Virginia Rules have not been updated. For example, the requirement of privilege logs for claiming attorney-client privilege or work-product protection is currently not Rule-based, but stems only from case law, such as State ex. rel. Nationwide Mut. v. Kaufman, 213 W.Va. 624, 658 S.E.2d 728 (W.Va. 2008) and State ex rel. Westfield Insurance Co. v. Madden, 216 W.Va. 16, 602 S.E.2d 459 (2004). Fortunately, proposed Rule 26(b)(5) fixes this.

The proposed changes to motion filing and briefing (proposed Rule 6(c)), expert disclosures (proposed Rule 26(a)(2) and (4)), and discovery in general (Rules 26-37) are especially appropriate. These Rules will finally provide clear guidance to attorneys as to

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what is required and will further serve to reduce the burden on otherwise busy Circuit Judges having to resolve procedural squabbles among attorneys.

I believe that one of the most significant proposed amendments is Rule 5(b)(1)(F) ("Sending it by other electronic means if the person consented in writing..." [the written consent could be easily accomplished]), because we can finally serve documents on counsel for other parties *by email*. Thousands of trees have died unnecessarily to produce the copy paper used to serve responsive motions, supporting memoranda, deposition notices, interrogatories and their answers, requests for production and their responses, requests for admissions and their responses, dispositive motions and their related memoranda, etc. The annual postage costs for serving all these documents likely exceeds hundreds of thousands of dollars. While the CourtPLUS e-File Project is putting an end to this waste, there is still about 25 counties waiting to be included in the CourtPLUS e-File System. There is no reason why attorneys should not be permitted to use email for service of virtually all documents upon counsel for the other parties in a case. Every attorney has an email address.

Having said all of this, I greatly applaud the efforts of the Committee which Chief Justice Walker appointed for their outstanding work in preparing the proposed revisions to our Rules of Civil Procedure. I sincerely hope that the Court will accept the Committee's proposals and revise the West Virginia Rules of Civil Procedure accordingly.

Very truly yours,



John C. Palmer IV

JCP:dlh